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IN THE
# Supreme Court of the United States
OCTOBER TERM, 1993

RUTH JAFFE,
*Petitioner,*

*vs.*

HARDY M. SNOW, JR. and
ACCREDITED SURETY & CASUALTY COMPANY, INC.,
*Respondents.*

PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA,
FIFTH DISTRICT

## REPLY BRIEF FOR PETITIONER

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**RUTH JAFFE,**
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vs.

**HARDY M. SNOW, JR. and ACCREDITED SURETY & CASUALTY COMPANY, INC.,**
Respondents.

**Petition For A Writ of Certiorari To The District Court of Appeal Of The State of Florida, Fifth District**

# REPLY BRIEF FOR PETITIONER

The Petition is based on the incontrovertible fact that the enforcement of Mrs Jaffe's Canadian judgment in the Florida courts is required both by the national interests and the international legal obligations of the United States.[1] The

[1] Because the issues in this Petition implicate international obligations owed by the United States to Canada, Petitioner urges this Court to request the views of the United States Government before deciding it.

question presented is whether the Supremacy Clause of the United States Constitution permits Florida to subvert these interests and obligations by condoning Respondents' kidnapping of Sidney Jaffe from Canada, and by immunizing Respondents from the enforcement of Petitioner's judgment to compensate her for these illegal acts..

The Florida courts completely ignored these issues in refusing to enforce Petitioner's judgment. And Respondents ignore them in their Opposition.[2]

The Florida courts in this case have created a renegade state foreign policy regarding transborder abductions in direct and irreconcilable conflict with the legal obligations the United States owes to Canada. Florida's lawless hostility to the enforcement of Petitioner's valid judgment against Respondents undermines not only United States foreign policy but also the joint undertakings agreed upon by the United States and Canada. By providing Respondents with a blanket immunity from Petitioner's judgment the Florida courts violated both the national undertaking the United States has made to Canada to deter transborder abductions and the Supremacy Clause of the Constitution.

This Court is the only remaining forum in which the national interests in effective deterrence of transborder kidnappings can be vindicated and the breach of this nation's international obligations to Canada can be avoided. This Court should grant the Petition to ensure that these interests, which

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[2] Respondent's Opposition is replete with invective and lengthy recitations of the procedural history of other litigation unrelated to the pending Petition. Petitioner will not offer a point by point response to the many misstatements in the Opposition. Sidney Jaffe has been the victim of a vindictive prosecution in Florida; however, the issues involved in the underlying prosecution of Mr. Jaffe do not affect Petitioner's right to enforce her judgment against respondents for their wrongful conduct.

would be advanced by the enforcement of Petitioner's judgment below, are not thwarted.

## I. THE FLORIDA JUDGMENT CONFLICTS WITH INTERNATIONAL LEGAL OBLIGATIONS OWED BY THE UNITED STATES TO CANADA AND THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION

It is obvious that the Florida courts simply refused to accept the supremacy of the national commitments made to Canada that require enforcement of Petitioner's judgment. Instead, they directly subvert those commitments. This fact is underscored by the incredible statement by the trial court that only "Florida common law principles of judicial comity" were implicated in this case. [Opp. Cert. App. 4]. Such a direct challenge to federal authority contravenes the Supremacy Clause.

The international legal obligations of the United States are reflected, in part, in a formal Exchange of Letters between the United States and Canada arising out the Jaffe kidnapping. *Amicus Curiae* Brief of the Government of Canada ("Can. Br."), Appendix B.[3] The United States has agreed to cooperate to deter transborder kidnappings of the kind practiced by Respondents in this case. The Supremacy Clause of the United States Constitution requires the Florida courts to implement this undertaking. *United States v Pink*, 315 U.S. 203 (1942).

The decision below also breaches the duty owed by the United States to Canada under customary international law to redress Petitioner's injuries suffered as a direct result of

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[3] The Exchange of Letters was an integral part of the negotiations of a Protocol to the United States and Canada that included a number of matters of concern to both governments. [Pet. A-42].

Respondents' illegal invasion of Canada's territorial sovereignty.[4] *Kear v Hilton*, 699 F. 2d 181, 184 (4th Cir. 1983). As the Third Restatement of the Foreign Relations Law of the United States ("Third Restatement") provides:

> A state is also responsible if it fails to provide an alien *remedies* for injury to person or property, whether inflicted by the state *or by private persons* in circumstances in which a remedy would be provided by the major legal systems of the world.

Section 711 cmt. e. (1986)(emphasis added). The Third Restatement further provides that "[i]t is wrong under international law for a state to deny a foreign national access to domestic courts." section 711, Reporters' note 1.

Sidney Jaffe's kidnapping circumvented the United States-Canada Extradition Treaty.[5] Treaty on Extradition, May 4, 1971, U.S.-Can., 27 U.S.T. 983. Florida prosecutors

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[4] It is beyond argument that sending bounty hunters into the territory of another country to obtain a criminal suspect violates international law and United States policy. [Can. Br. 4-6]. See also Amicus Curiae brief of Canadian Helsinki Watch, at 5-8.

[5] This Court's decision in *United States v Alvarez-Machain*, 112 S. Ct. 2188 (1992) is not to the contrary. In *Alvarez* this Court found that a criminal defendant could not contest the personal jurisdiction of a federal court on the ground that the United States-Mexico Extradition Treaty was violated when he was kidnapped by U.S. agents. This Court did not find that such kidnappings were permitted under international law or that damages were not available for them. Nor did this Court consider the issue of whether the United States-Canada Extradition Treaty, with its independent negotiation history, prohibited the kidnapping of suspects from Canadian territory, as the government of Canada asserts in its *amicus curiae brief*. [Can. Br. 4].

sought his extradition under the Treaty but these attempts were rejected by the Governor of Florida. There is no evidence that Canada would have refused extradition.[6] [Pet. App A-38] Instead, Respondents took the law into their own hands by kidnapping Mr. Jaffe, after the lawful process provided for under the United States-Canada Extradition Treaty had been refused, creating an international incident requiring negotiations between the United States and Canada at the highest levels of government. These negotiations led to the undertakings the United States made to Canada to cooperate to deter such kidnappings, undertakings ignored by the Florida courts below when they refused to enforce Petitioner's judgment.

There is no question that both the United States and Canada viewed this kidnapping as a wrongful act, notwithstanding the Florida Court of Appeal's apparent belief that only Canada takes this view. [Pet. App A-13] The United States-Canada Extradition Treaty specifically provides for the extradition of persons involved in such kidnappings. Mr Jaffe's kidnappers were extradited to Canada, with the full support of the United States government, to stand trial for the kidnapping and they were convicted of this crime.[7]

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[6] Respondents now claim that the reason that the Governor of Florida rejected two applications for Sidney Jaffe's extradition is that the crimes were not extraditable. [Resp. Br. at 12]. The record does not support this position. In any event, even if the crimes were not extraditable this would not authorize Respondents to kidnap Mr. Jaffe from Canadian territory or the Florida courts to grant Respondents immunity from civil liability for their illegal acts.

[7] The public policy of the United States is also reflected in 18 U.S.C. 1201 which imposes federal criminal penalties for the acts committed by respondents' agents in Canada. *See United States v de la Rosa*, 911 F. 2d 985 (1990), *cert. den.*, 111 S.Ct. 2275 (1991).

Petitioner's judgment compensated her for the expenses she incurred[8] as a result of Respondents' illegal acts in kidnapping Sidney Jaffe from Canadian territory. The Canada-United States Letter of Understanding exchanged as a result of the kidnapping in this case represents the policy of the United States and an undertaking to Canada to cooperate in deterring transborder abductions like the one that is the foundation of Petitioner's compensatory judgment.

Florida's failure to enforce Petitioner's judgment flies in the face of this country's commitment to Canada and undermines the good faith implementation of the United States-Canada Extradition Treaty.[9] The immunity granted to respondents by the Florida courts officially condones these wrongful acts and therefore subverts the international obligations of the United States in violation of the Supremacy Clause.

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[8] Respondent's continue to characterize Petitioner's damages as being for "loss of consortium. [RB, at 24]. Petitioner's Canadian Judgment is based on the actual expenses she incurred to remedy the international law violation orchestrated by respondents. These actual out of pocket expenses are found in the record of this case. *See* Affidavit of Ruth Jaffe, June 6, 1991, Exhibit "B."

[9] *See Amicus Curiae* brief of International Human Rights Law Group, Allard Lowenstein International Human Rights Law Clinic and the Center for Constitutional Rights, at 26-35.

## II. THE "PUBLIC POLICY" GROUNDS RELIED UPON BY THE FLORIDA COURTS FOR REFUSING TO ENFORCE PETITIONER'S JUDGMENT ARE IN CONFLICT WITH THE SUPREMACY CLAUSE

The primary arguments raised by Respondents and relied upon by the Florida courts below is that Sidney Jaffe should be considered a "fugitive from justice." Because the Florida courts viewed Petitioner's claims as "derivative" of Mr. Jaffe's claims the courts concluded that it is against *Florida* "public policy" to enforce Petitioner's judgment.

But the fact that Florida considered Sidney Jaffe to be a "fugitive from justice" cannot be a valid ground for refusing to enforce Petitioner's judgment.[10] This principle, if accepted, would always immunize transborder kidnappers from any civil accountability for their wrongful acts. It also flies in the face of this Court's assumption in *Ker v Illinois*, 119 U.S. 436, 444 (1886), that damage remedies are available to compensate the victims of transborder kidnappings. *See also United States v Matta-Ballesteros*, 700 F. Supp. 528, 530 (N.D. Fla. 1988).

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[10] Respondent's seek to distance themselves from the Florida Court of Appeal's reliance on Mr. Jaffe's failure to appear after he was charged with organized fraud after his original conviction was overturned on appeal in 1983. [Resp Br. at 18]. These charges were brought at a time when Canada was pursuing Mr. Jaffe's kidnappers on criminal charges, criminal proceedings in which Sidney Jaffe was the key witness. Florida never sought to extradite Mr. Jaffe on these charges even though it is clear they fall within the United States-Canada Extradition Treaty. Moreover, the statute upon which these charges were based was repealed by the Florida legislature in 1987. Thus, the Florida courts' reliance on the second set of charges in denying enforcement of Petitioner's judgment is doubly suspect. [Pet.App. A-14]

Florida's impermissible misuse of the "fugitive from justice" principle to immunize the perpetrators of transborder abductions in Florida courts thwarts important national interests of the United States. This state "policy" directly contradicts the national public policy on transborder abductions established by the federal government. It cannot stand under the Supremacy Clause.

Petitioner's judgment provides compensation for injuries caused **to her** because of a violation of international law orchestrated by respondents when they conspired to kidnap Petitioner's husband Sidney Jaffe from Toronto, Canada in September 1981[11]. Whether or not the Florida courts find these injuries to be "derivative" of Mr. Jaffe's claims under Florida law, the United States has a duty to facilitate the enforcement of Petitioner's judgment based on its international legal obligations and the specific undertakings made by the United States to Canada in this case.

The Florida courts relied on the fact that Canadian tort law is different from Florida tort law in that Florida law permits the kind of bounty hunting engaged in by respondents. [Pet. A-23]. The Florida "policy" that condones conduct is, of course, precisely the problem raised by this Petition. Such a "public policy" would violate the international legal obligations of the United States and the Supremacy Clause. *Zschernig v Miller*, 389 U.S. 429 (1968).

Nor may the Florida courts determine that the national undertaking made to Canada to deter transborder kidnappings is satisfied by the extradition and conviction of Sidney Jaffe's kidnappers. [Pet. App A-13]. Petitioner's Canadian judgment implements the United States-Canada joint commitment to deter

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[11] Respondents concede that Sidney Jaffe became a Canadian citizen at least as early as 1981. [Resp. Br. 12]. Though Respondents and the Florida courts below appear to believe that Mr. Jaffe's citizenship is significant, Respondents' conduct was illegal and violated Canada's territorial sovereignty regardless of his citizenship.

such acts. The United States-Canada agreement may not be undermined by Florida's decision to immunize respondents from civil liability. This immunity is in stark conflict with the international obligations and public policy of the United States. Florida may not adopt a more forgiving policy toward transborder abductions than federal law and policy requires without violating the Supremacy Clause of the United States Constitution. The Florida judgment below rests on the flawed view that Florida was free to refuse to enforce Petitioner's judgment for its own narrow interests without regard to national interests. For this reason the Florida judgment should not be allowed to stand.

It is not open to the states to consider that compliance with treaty obligations or customary international law to violate vague "public policy" determined by the hostile reaction of state courts to the facts of a given case. If accepted, such a principle undermines the fundamental mandate of the Supremacy Clause and would have disastrous consequences for our relations with other friendly governments.

## CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

September 23, 1993

Respectfully submitted,

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